

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

March 23, 2018

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Hawaii

Cancellation of Revocable Permit No. S-5127, Elizabeth Marks Stack, Les Marks and Cynthia Marks Salley dba McCandless Properties, Permittee, and Issuance of a Revocable Permit to McCandless Land & Cattle Company, LLC, for Access Purposes, Waiea, South Kona, Hawaii, Tax Map Key: (3) 8-6-001:003.

REQUEST:

Cancellation of Revocable Permit No. S-5127 effective August 31, 2017.
Issuance of a revocable permit to McCandless Land & Cattle Company, LLC for access easement purposes.

LEGAL REFERENCE:

Sections 171-55 and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended.

LOCATION:

Government lands of Waiea, South Kona, Hawaii, identified by Tax Map Key: (3) 8-6-001:003, as shown on the attached map labeled Exhibit A.

AREA:

10.0 acres, more or less.

ZONING:

State Land Use District: Agriculture
County of Hawaii CZO: Ag-20 - agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Currently encumbered under Revocable Permit No. S-5127, Elizabeth Marks Stack, Les Marks and Cynthia Marks Salley dba McCandless Properties, for pasture purposes.

REVOCABLE PERMIT CHARACTER OF USE:

Access purposes.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

MONTHLY RENTAL:

\$40.00 per month (minimum rent as established by the Board at its meeting of May 13, 2005, agenda item D-19). Exhibit B

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the Exemption List for the Department of Land and Natural Resources, approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item No. 51 as stated in the Exemption Notification attached as Exhibit C.

REVOCABLE PERMIT APPLICANT:

McCandless Land & Cattle Company, LLC.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u> </u>

REMARKS:

Background:

At its meeting of February 14, 1975, under agenda item F-1-c, the Board of Land and Natural Resources (Board) authorized the issuance of Revocable Permit No. S-5127 to Elizabeth Loy Marks, Elizabeth Marks Stack, Les Marks and Cynthia Marks Salley dba McCandless Properties (Permittee), as tenants in common, covering the subject property for pasture purposes commencing February 15, 1975 for the monthly rental of \$110.00.

Then, at its meeting of December 12, 1992, under agenda item F-14,¹ the Board approved the change of use from pasture to access purposes only. After a review of the file by staff, it was discovered that the Permittee was not informed of the Board meeting or the action taken by the Board with regards to the change in the character of use for the revocable permit.

By letter dated November 4, 1994, the Permittee was notified of the change in use by the Land Management Administrator (Exhibit D). In a response letter dated November 29, 1994 (Exhibit E), Cynthia M. Salley, representing the Permittee wrote back expressing surprise that the character of use was changed without their knowledge and/or consent. She further explained that the McCandless Ranch had been working with both the Division of Forestry and Wildlife (DOFAW) of DLNR and the United States Fish and Wildlife Service (USFWS) on a stewardship program involving the recovery efforts of the endangered Hawaiian crow or Alala (*Corvus hawaiiensis*) and that this stewardship program included the subject parcel.² At no time was there any mention of a change in the character of use. In her letter, Ms. Salley requested the Board reconsider its action of December 12, 1992 and return the permit to its original character of use.

In a letter dated January 10, 1995, the Land Management Administrator responded to Ms. Salley's letter stating that the Land Management Division was unaware of the stewardship agreement with DOFAW and the USFWS regarding the 'Alala recovery program. The letter also indicated that the permit will continue, with no additional explanation provided.

Revocable Permit:

This permit is situated on 1,258 acres of State land in Waiea, South Kona. It is a landlocked parcel with no legal access. The Permittee is the owner of several parcels adjacent to the south and eastern portions of the State land. The northern boundary is land owned by the federal government and managed by the USFWS as part of the Alala Restoration Area within the Hakalau Forest National Wildlife Reserve. The Permittee has been working with the USFWS in constructing and maintaining ungulate proof

¹ Annual review of Revocable Permits.

² The stewardship program included the replacement of sections of existing ungulate fencing on McCandless Ranch land to exclude feral pigs, cattle and sheep, which would protect high quality, ecologically sensitive native forest land and enhance native wildlife habitat.

fencing along the boundary as a means of protecting the Alala Restoration Area.

According to the General Manager for McCandless Land & Cattle Company, LLC (McCandless Ranch), Keith Unger, the Permittee has ceased cattle operations on the State land for some time. However, Permittee still utilizes the parcel as an access route to its mauka properties and wishes to continue the access use.

The easement is also utilized by the USFWS and DOFAW as an access to the Alala Restoration Area within the Hakalau Forest National Wildlife Reserve. Staff will be working with personnel from DOFAW and USFWS in addition to the Permittee on a permanent easement through the subject parcel.

The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

A request for comments on the submittal and HRS Chapter 343 exemption was distributed to various government agencies with the responses indicated below.

County of Hawaii Agencies	Comments
Environmental Management	No Comments
Fire Department	No Comments
Planning	No Response
Police Department	No Comments
Public Works	No Objections
State of Hawaii Agencies	Comments
DLNR – Historic Preservation	No Response
DLNR – Forestry and Wildlife	Response Below
DLNR – Water Resource Management	No Response
DOH – Environmental Management	No Response
DHHL	No Response
Other Agencies	Comments
Office of Hawaiian Affairs	No Response
NRCS	No Response
US Forest and Wildlife Service	No Response

DOFAW has expressed an interest in assessing the biological resources of the Waiea Tract currently encumbered under RP S-5127 and determining its value for native ecosystem and watershed protection. In order to do this, the DLNR will need to partner with McCandless Ranch to access the parcel through its private property (Exhibit F). Should McCandless Ranch be agreeable to a reciprocal access arrangement, a long-term

easement benefiting both the DLNR and McCandless Ranch can be negotiated.

McCandless Ranch has been a longtime steward of the Waiea tract and the surrounding area. DLNR would like to work with it to learn more about the Waiea parcel and how best the land could be managed for native ecosystem and watershed protection.

In addition, DOFAW has expressed an interest in forming a partnership with McCandless Ranch and the Hakalau Forest National Wildlife Refuge and working together on an effective management program for the area.

Subject to the Applicant meeting all the above conditions, staff is recommending that the Board authorize the cancellation of Revocable Permit No. S-5127 to Elizabeth Marks Stack, Les Marks and Cynthia Marks Salley dba McCandless Properties and consent to the issuance of a month-to-month revocable permit for access easement purposes to McCandless Land & Cattle Company, LLC.

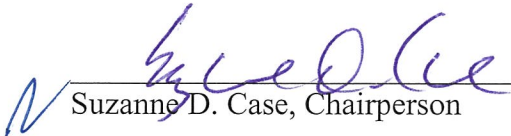
RECOMMENDATION: That the Board:

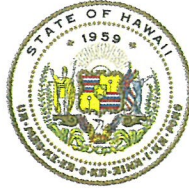
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment;
2. Authorize the cancellation of Revocable Permit No. S-5127 to Elizabeth Marks Stack, Les Marks and Cynthia Marks Salley dba McCandless Properties in the manner specified by law;
3. Authorize the issuance of a revocable permit to McCandless Land & Cattle Company, LLC, for access purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
 - b. Monthly rental shall be set at \$40.00 per month, minimum rent as established by the Board;
 - d. Review and approval by the Department of the Attorney General; and
 - e. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

March 2, 2018

MEMORANDUM

TO: Suzanne D. Case, Chairperson

THROUGH: Russell Y. Tsuji, Land Administrator

FROM: Gordon Heit, District Land Agent

SUBJECT: In-House Valuation Recommendation – Revocable Permit for Access Purposes.

PSF No.: 18HD-007
Applicant: McCandless Land & Cattle Company, LLC
Location: Waiea, South Kona, Hawaii
Tax Map Key: (3) 8-6-001:003
Char. Of Use: Access purposes.

We are attempting to determine the monthly rental amount for the issuance of a revocable permit for access purposes on the above-referenced property.

The subject property is State land in the South Kona district on the Island of Hawaii currently encumbered under Revocable Permit No. S-5127 to Elizabeth Marks Stack, Les Marks and Cynthia Marks Salley dba McCandless Properties. It is a triangular shaped piece of land consisting of approximately 1,258 acres. The Applicant has ceased using the property for pasture purposes, but wishes to continue utilizing an access route to their private property above the State land under the name listed above.

There are no other similar month to month revocable permits issued for access use in the South Kona district. The calculation used to determine the monthly rent is based on the per square foot of the Net Taxable Land Value¹ (\$35,200). The annual rent for the 10 acre access easement is calculated to be \$280.00.

¹ County of Hawaii, Real Property Tax Office, 2018 assessment

Staff is therefore recommending the minimum rental rate of \$480.00 per annum or \$40.00 per month.


Special Assumptions and Limiting Conditions

- 1) This rental valuation estimate is for internal purposes only. This document does not take the place of an appraisal and does not constitute an appraisal that adheres to the Uniform Standards of Professional Appraisal Practices.
- 2) The subject property was not inspected by an appraiser.

Approved/Disapproved:



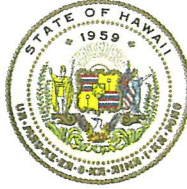
Suzanne D. Case, Chairperson



Date

cc: District File
Central File

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY. T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Request for a Month to Month Revocable Permit to McCandless Land & Cattle Company, LLC, for Access Purposes.

Project Number: PSF No. 18HD-007

Project Location: Waiea, South Kona, Hawaii, Tax Map Key: (3) 8-001:003.

Project Description: The requested parcel is currently encumbered under RP S-5127 for pasture purposes. The Permittee has ceased utilizing the land for pasture but has continued use of the State land to access its adjacent private property. The applicant wishes to continue utilizing the State property as a means of accessing its adjacent lands.

Consulted Parties: Agencies listed in the submittal.

Exemption Class No.: In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 51 that state "Permits, licenses, registrations, and rights-of-entry

EXHIBIT C

issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing”.

Recommendation:

It is anticipated the issuance of a new permit to Applicant in itself will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment. It is recommended that the Board of Land and Natural Resources find that the issuance of the permit is exempt from the preparation of an environmental assessment.

November 4, 1994

LM:CU

McCandless Land and Cattle Company
P.O. Box 500
Honaunau, Hawaii 96726

Subject: Revocable Permit No. S-5127

Gentlemen:

A review of your revocable permit file indicates our Hawaii District Office had not informed you that the Land Board at it's meeting of December 18, 1992, Agenda Item F-14, directed Land Management Division to change the character of use for said permit from pasture to access purposes only.

We will need to determine with you the alignment and area of the alignment of the access (roadway) and, subsequently revise your monthly rent to reflect same.

Accordingly, please advise us whether you accept the actions approved by the Board and, if so, submit to this office a map showing the access alignment and it's approximate area.

If you have any questions, please contact Ms. Charlene Unoki of my staff by November 30, 1994 at 587-0456. Our sincere apology for the tardiness in this matter.

Very Truly Yours,

W. MASON YOUNG
Land Management Administrator

cc: Hawaii District Land Office
Hawaii District Board Member

EXHIBIT D



W. Mason Young
Land Management Administrator
Dept. of Land and Natural Resources
P. O. Box 621
Honolulu, Hawaii 96809

November 29, 1994

Re: Revocable Permit No. S-5127

Dear Mr. Young;

Your letter of November 4 took us by complete surprise, an unwelcome one at that. Especially in view of the fact that earlier this year, on June 29, personnel from the Dept. of Land and Natural Resources, headed by Michael Buck, went up in the Waiea tract for an inspection tour. Their reaction was positive and favorable, to the point of remarking that it was in better shape than the State land under their own management, and they saw no reason for the permit or the status quo to change, not realizing that it already had.

We do not understand, and would like to know, on whose recommendation the change was considered. The people who are familiar with the land and with our stewardship of such, namely the DLNR and USFWS both deny knowing about, or having any causative effect on the decision. We would like to request that the Land Board please reconsider their action of December 1992, and return the permit to its' original character, which is agriculture/pasture. The only part of the lease that is presently, or that has ever been, used by us is above the 4200' level. We have no plans to change that, or to extend that area. Our cattle herd was significantly reduced in numbers, two years ago, and our long range plans, refocused. We are starting an eco-tour program, on a very small scale. This has all been done with the knowledge of Mr. Robert Smith of the U. S. Fish and Wildlife Service, with whom we work very closely. This information and our plans were also shared with Michael Buck and Charlie Wakida of the DLNR. All parties shared our enthusiasm for the new venture.

We are working with the recovery team to try to help them open doors to other private lands, necessary for the recovery of the Alala, based on our experiences with the Bureaucracies. It is to all of our benefits that Government (Federal and State) relationships, with private landowners remain cooperative, as they once were long ago, rather than

EXHIBIT E

threatening, which they have tended to be in recent years. A prototype and an experimental program is the Alala recovery program, in which everyone is in dialogue in attempting a partnership association. It seems to be making positive progress. We hope that the situation with the Waiea Permit can fit into this scenario. Please contact Mr. Robert Smith, or Mr. Michael Buck, to verify the fact that they are in support of our position, and that they believe that we have been good stewards of the land over the 75 or so years that we have managed it.

We would be happy to answer, in person, any questions the Land Board or staff might have concerning our management of the area. Either I, or Keith Unger, the Ranch manager, can be reached at 328-8246 or 328-9313.

Please notice an additional c.c. to Dr. Scott Derrickson. He is the curator of birds at the National Zoological Park Conservation and Research Center, and the Alala Recovery Team Leader. Keith Unger, another member of the Recovery Team, thought it would be important to keep Dr. Derrickson apprised of any possible change in the relationship between the State and McCandless Ranch as it pertains to the Waiea Tract.

Sincerely,



Cynthia M. Salley

c.c. Mr. Robert Smith
Mr. Michael Buck
Dr. Scott Derrickson

Proposed Access

EXHIBIT F

